IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5471 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUBHASSING BHAGWATSING RAJPUT

Versus

COMMISSIONER OF POLICE AHMEDABAD

Appearance:

MR ANIL S DAVE with MS BANNA DATTA for Petitioner

MR AJ DESAI, ld.AGP for Respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 16/03/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the order dated 13th July 1999 passed by the Police Commissioner, Ahmedabad City, detaining the petitioner under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985. The petitioner was

committed to the Surat Jail and since the date of the order of detention he is in Surat Jail.

2. The grounds of detention enclosed with the detention order show that two criminal cases were registered against the petitioner for offences under Chapeter 16 and 17 of the IPC at Amraiwadi Police Station being Criminal case nos.243/99 dated 2.6.1999 and 247/99 dated 4th June 1999. One more case being DCB Police Station C.R. No.302/99 under the Arms Act was also registered against the petitioner on 21st June 1999. After taking into consideration the aforesaid three criminal cases pending investigation against the petitioner, the detaining authority has mentioned the incidents dated 31st May 1999 and 15th June 1999 about which the witnesses have deposed against the petitioner. The detaining authority has also invoked the privilege under Sec.9(2) of the Act about disclosure of the names and addresses of the witnesses. The detaining authority has found the petitioner to be engaged in anti social activities with his associates and has mentioned that the petitioner is a dangerous person required to be detained and that it is not possible to deter the petitioner from continuing his anti social activities, threatening public order unless he is detained.

3. The detention has been challenged on grounds more than one. However, it is not necessary for me to deal with all the grounds because this petition deserves to be allowed only on the ground that it is a case of wrong exercise of power under Sec.9(2) of the Act and the detaining authority had no sufficient time whatsoever to apply its mind on the materials placed before it so as to come to the conclusion that it was a case for invoking the privilege under Sec.9(2) of the Act and that it was a case for detention. It has been pointed out by learned Asstt. Govt. Pleader while answering the aforesaid ground that in fact the proposal in this case was made on 12th July 1999, the verification of the statements were made on the 13th July 1999 and the detention order was also passed on the same day, i.e. 13th July 1999. Such being the admitted position with regard to the facts of making the proposal on 12th July 1999, verification of the statements on 13th July 1999 and passing of the detention order on 13th July 1999, this case is found to be squarely covered by a decision of this Court against the respondents and in favour of the petitioner. In the case of Kalidas v. State reported in 1993 (2) GLR 1659, the Division Bench of this Court has considered the case in which the proposal was made on 16th October 1992 and the detention order was passed on the next day, i.e.

17th October 1992 and the Division Bench in no uncertain terms held that it was a wrong exercise of privilege under Sec.9(2) of the Act, because the entire bunch of material was supplied by the sponsoring authority at the time of making the proposal on 16th October 1992 and that had been promptly accepted by the detaining authority and the detention order was passed on the next day and thus the right of the petitioner to make the representation as contemplated under Article 22(5) of the Constitution of India was adversely affected and the exercise of power under Sec.9(2) was wrong. In the case at hand, the situation is almost identical, as the proposal was made on the previous day, the verification was made thereafter on the next day and the detention order was passed on that very day.

4. For the reasons recorded in the judgment, the impugned detention order dated 13th July 1999 passed by the Police Commissioner, Ahmedabad City, detaining the petitioner under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985, cannot be sustained in the eye of law and the same is hereby quashed and set aside. It is directed that the petitioner-detenu Subhassing Bhagwatsing Rajput, lodged in Surat Jail, as a PASA detenu shall be released forthwith, if not required to be detained under any other detention order or in any other criminal case. This Special Civil Application is allowed and the Rule is made absolute.

(M.R. Calla, J.)

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